

**CITY OF MILWAUKIE
CITY COUNCIL AGENDA
MARCH 18, 2003**

MILWAUKIE CITY HALL
10722 SE Main Street

1906TH MEETING

REGULAR SESSION - 6:00 p.m.

- I. CALL TO ORDER**
Pledge of Allegiance
- II. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
- III. CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*
- IV. AUDIENCE PARTICIPATION** *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*
- V. PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

None Scheduled

- VI. OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*
 - A. Authorize Staff to Solicit Bids for Safeway Building Demolition (Somers/Rouyer)**
 - B. PERS Appeal – Resolution (Swanson/Ramis)**
 - C. Authorize City Manager to Excuse the City Attorney from a Council Meeting – Resolution (Swanson)**
- VII. INFORMATION**
- VIII. ADJOURNMENT**

EXECUTIVE SESSION -- *At the end of the regular meeting, the Council may hold an Executive Session under the authority of Oregon Revised Statutes 192.660 as needed.*

For assistance/service per the Americans with Disabilities Act (ADA), dial TDD 786-7555.

The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.



To: Mayor and City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Community Development and Public Works

From: Kelly Somers, Fleet and Facilities Manager

Subject: Demolition Phase 1 Old Safeway Building

Date: MARCH 4, 2003 for March 10, 2003 Meeting

Action Requested

Authorize the Facility Maintenance Department to solicit for bids for the demolition of the old Safeway Building, Phase 1, and authorize the City Manager to sign a demolition contract not to exceed \$35,000.

Background

The City recently purchased the old Safeway site, including the building, for redevelopment. Staff has renamed the project the North Main Street Redevelopment Project. The City is in the process of working with developers to submit proposals for the development of the site.

The demolition of the building will be done in two phases:
Phase 1 of the project will demolish the building down to the floor slab and dispose of the debris.

Phase 2 of the project will be to remove the floor slab including the basement and the loading dock areas and to level the area as needed.

Concurrence

The Facilities Department recommends that City Council authorize staff to solicit for bids; and authorize the City Manager to sign the contract for the demolition of the old Safeway building phase 1, not to exceed \$35,000.

Fiscal Impact

The fiscal impact to the Facility Management Budget would be \$35,000. This would include the necessary permits required.

Work Load Impacts

These projects will require approximately 60 hours of staff time to complete. The following departments are included in this estimate: Facility Maintenance department, Water Department and Sewer Department.

Alternatives

The City Council has the following decision-making options:

1. Direct staff to proceed with the project.
2. Direct staff to not proceed with the project.



TO: Council President and City Council

FROM: Mike Swanson, City Manager

SUBJECT: PERS Appeal

DATE: March 8, 2003

Action Requested

Decision on the request by League of Oregon Cities Executive Director Ken Strobeck regarding an appeal of the City's rate order by the PERS Board. If the decision is to proceed on the appeal, Council will authorize by resolution the Council President to execute the attached letter of engagement to the Law Firm of Mersereau & Shannon, LLP.

Background

Much of the background for this agenda item is contained in League Director Strobeck's attached memorandum dated February 17, 2003. Milwaukie's rate increase went from 10.44% to 15.29%, or an increase of 4.85%.

In a letter dated December 10, 2002 to the PERS Board recommending the rate increases, Milliman USA, Consulting Actuary, noted a couple of major issues that were not included in its rate report. Among those issues they mentioned the following:

Litigation: There is one outstanding lawsuit that may have a material impact on future employer contribution rates. The Lipscomb decision may require the Board to reallocate investment earnings for periods prior to the valuation date. If the underlying data on member account balances and retirement allowances is revised, the Board may wish to consider adjustments to the employer contribution rates contained in this report.

On the one hand, there is an argument that the Lipscomb decision has not been fully implemented. The argument would have the City's rates changes as that decision is implemented.

On the other hand, the cost of this appeal process is minimal--\$150 for "[p]rosecution of the appeal to judgment in circuit court."

In an informal poll taken Friday, March 7, 2003, the following cities responded to the question of whether or not they were joining the LOC appeal as follows:

- Hillsboro—no position yet
- Lake Oswego—no position yet
- Beaverton—no position yet
- Oregon City—yes
- Tualatin—yes
- Gresham—yes
- Sherwood—yes
- West Linn—looking into it
- Tigard—yes

Concurrence

Tim Ramis has reviewed these documents.

Fiscal Impact

The cost of joining the appeal is minimal--\$150.00. The City's rate increase was 4.85%. If this appeal has the effect of reducing the rate, the savings could be significant.

Work Load Impact

There is no impact as the League has contracted with outside counsel to prosecute the appeal.

Alternatives

Decline to participate in the appeal. Implementation of the Lipscomb decision may reduce the rate assessed to the City.



Date: February 17, 2003
To: PERS-Covered City Employers
From: Ken Strobeck, Executive Director
Re: Alert Regarding Challenges to 2003 PERS Rate Orders

Tuesday, February 11, the PERS Board (PERB) adopted new employer rates effective July 1, 2003. They took this action despite the ruling of Marion County Judge Paul Lipscomb, the Governor's stated principles for PERS reform and the bills proceeding through the Legislature. The adopted rates are still based on the discredited current practices of the PERB. The League of Oregon Cities is now calling on cities, along with other public employers, to take action to protest this decision.

Each PERS-covered city is encouraged to file an appeal of your city's rate order as soon as possible. As a public employer, your city will have 60 days from the date of the rate adoption to file a formal appeal.

As originally described in detail in our January 7 memo, the League has retained the services of attorneys John W Osburn and Peter W. Mersereau of the Portland firm Mersereau & Shannon, LLP, to file appeals of the 2003 employer rate orders for any LOC member cities that elect to participate. The League has negotiated a single flat-fee rate of \$150 for any of our members who choose to file an appeal. The fee covers the following services:

- Filing a timely notice of appeal in Marion County Circuit Court;
- Prosecution of the appeal to judgment in circuit court; and
- In the event of legislative action materially affecting the litigation, consultation with the League and individual participants regarding any subsequent legal action.

To participate in the appeal, your city must:

- Adopt the PERS rate order challenge resolution;
- Complete the letter of engagement and return it to the League office along with a copy of your city's rate increase notice and a copy of the adopted resolution; and
- Enclose a check for \$150 made out to Mersereau and Shannon, LLP.

The League will collect and forward all materials to the firm and keep participating cities up to date on the progress of the litigation. These materials were included in our packet of January 7 and are also included in this mailing.

The League needs to receive your appeal materials by Friday, March 21.

The cost for this legal appeal is low and the potential payoff, in the form of reduced rates, could be significant. Please do not hesitate to call the League office if you have questions regarding this project or other any other PERS-related efforts.

March 18, 2003

John W. Osburn, of Counsel
Peter W. Mersereau
Mersereau & Shannon, LLP
1600 Benj. Franklin Plaza
One SW Columbia
Portland, Oregon 97258

Subject: Representation of City in Appeal from PERS Order

Gentlemen:

This will confirm your availability and willingness to provide legal services to the City of Milwaukie in filing an appeal to the Circuit Court of the State of Oregon for Marion County from the decision of the Oregon Public Employees Retirement Board dated February 11, 2003, and prosecuting that appeal to conclusion in the circuit court. That order is expected to increase the contribution rate for PERS employers effective July 1, 2003.

The Oregon Administrative Procedures Act provides that an appeal from such an order must be filed within 60 days of the order from which the appeal is taken.

On October 7, 2002, in the case of the City of Eugene v. PERB, which is referred to as PERS I, Marion County Circuit Judge Lipscomb ruled that PERB violated its statutory duties in administering the Public Employees Retirement Fund by improperly calculating employer obligations for payment of benefits to retirees with investment in variable accounts who choose the money match option, by distributing earnings to employee accounts without maintaining proper reserves, and by using outdated mortality tables which prescribe higher monthly retirement payments than are actuarially justified.

PERB's proposed employer rates for 2003 do not reflect corrective calculation in accordance with Judge Lipscomb's order. In order to maintain the benefit to employers from Judge Lipscomb's order, and to avoid the loss of that benefit in the 2003 rate calculation, we authorize you to file an appeal of behalf

of the City. A copy of the notice from PERS as to the proposed employer contribution rate is attached to this letter.

The City has designated Michael F. Swanson, City Manager, as the City's contact person for information regarding the City's participation as a PERS employer.

We enclose the City's check in the amount of \$150 which you agree to accept in full payment for your services in the circuit court.

In accepting this engagement, you certify that you know of no conflicts of interest on the part of either John W. Osburn or Mersereau & Shannon LLP, and agree that you will not acquire any such conflicts related to the subject of this litigation. The City acknowledges that you have been engaged represent the participating members of the Oregon School Boards Association, and the Special Districts Association of Oregon and the Association of Oregon Counties. The City does not consider the representation of similarly situated employers to constitute a conflict of interest.

If the terms of this arrangement are satisfactory, would you please so indicate by endorsement below and return a copy to the City.

The City of Milwaukie

Larry Lancaster
Council President

The terms of this engagement are accepted and agreed to.

Dated: _____

John W. Osburn, on behalf of John W. Osburn,
PC and Mersereau & Shannon, LLP

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE LEAGUE OF OREGON CITIES TO COORDINATE FILING AN APPEAL ON THE CITY'S BEHALF, THROUGH OUTSIDE COUNSEL, FROM THE RATE INCREASES RECEIVED FROM PUBLIC EMPLOYEE RETIREMENT SYSTEM.

WHEREAS, eight public employers brought suit against the Oregon Public Employee Retirement System (PERS) in Marion County Circuit Court and;

WHEREAS, those employers claimed they were being overcharged in the calculation of employer contribution rates; and

WHEREAS, Judge Paul Lipscomb has returned the case to the Oregon Public Employee Retirement System Board with instructions to update employee mortality tables, issue new employer rate orders for 1998 and 2000 and make a new earnings allocation order for the 1999 investment year; and

WHEREAS, the Oregon Public Employee Retirement System Board has yet to comply with these instructions; and

WHEREAS, the Oregon Public Employee Retirement System Board adopted the proposed employer rate increases at its February 2003 regular meeting; and

WHEREAS, the proposed employer rate increases would be less if the Board had complied with Judge Lipscomb's instructions;

NOW, THEREFORE, the City Council of the City of Milwaukie authorizes the League of Oregon Cities to coordinate the filing of an appeal on the City's behalf, through outside counsel, from the rate increase received from PERS.

This resolution is effective upon adoption.

Introduced and adopted by the City Council of the City of Milwaukie on the 18th day of March 2003.

Larry Lancaster, Council President

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:

Ramis, Crew, Corrigan & Bachrach, LLP



TO: Mayor and City Council

FROM: Mike Swanson, City Manager

Subject: Authorizing the City Manager to Excuse the City Attorney from a Council Meeting

DATE: March 5, 2003

Action Requested

Approval of the proposed resolution delegating to the City Manager the authority to excuse the City Attorney from attendance at a Council meeting if there is no need for legal advice at the meeting.

Background

Milwaukie Municipal Code Section 2.04.120 reads as follows:

Unless excused by the council, the city manager and city attorney shall attend all regular and special meetings. The city recorder, finance director and public works director shall attend all regular meetings and those special meetings where their attendance is required, unless excused by the city manager. In the event a staff member is unable to attend a particular meeting, an alternate may be required.

The City Attorney is a contract position compensated at an hourly rate. Thus, any time the City can eliminate the need for the attendance of the City Attorney, that represents a cost that is avoided.

Given that the City Manager is engaged in the preparation of the agenda and in contact with the City Attorney on a weekly basis, he/she is able to determine whether or not an agenda requires the presence of the City Attorney. Quite often an agenda item that did not at first blush appear to present a legal issue will spawn one as the weeks progresses.

However, the resolution is not intended to delegate unchecked authority to the City Manager. Rather, it requires that the decision be made “after consultation with the City Attorney.” In addition, it should also be made in light of an overriding City policy in favor of seeking the advice of legal counsel.

In reality this situation has not arisen more than once or twice in my tenure. I do not anticipate it happening often. Gary Firestone and I discussed this occurrence and decided that this would be an easier approach should it happen again.

Concurrence

The City Manager and City Attorney are in concurrence with this approach.

Fiscal Impact

The only fiscal impact will be a savings as it will serve to reduce the cost of services if used.

Workload Impacts

There will be no workload impacts.

Alternatives

At present we have found few occasions where we need to seek Council consent (in fact, in the past we have probably not done so). This time we e-mailed each Council member and hope to get three affirmative responses. If we do not by Monday, I will call the necessary number or we will have a representative from the City Attorney's office present.

**CITY OF MILWAUKIE
RESOLUTION NO. _____**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DELEGATING TO THE CITY MANAGER THE AUTHORITY TO EXCUSE THE CITY ATTORNEY FROM REGULAR AND SPECIAL MEETINGS OF THE CITY COUNCIL PURSUANT TO MILWAUKIE MUNICIPAL CODE SECTION 2.04.120.

WHEREAS, Milwaukie Municipal Code Section 2.04.120 requires the attendance of the City Attorney at “all regular and special meetings” of the Council “[u]nless excused by the council;” and

WHEREAS, the City Attorney is a contract position that is billed on an hourly basis; and

WHEREAS, there is a cost savings to the City when the City Attorney does not attend Council meetings when there is nothing on the agenda that requires City Attorney advice; and

WHEREAS, it is the policy of the City Council that the City is best served when it errs on the side of maximizing the use of its legal advisor; and

WHEREAS, it is likewise the policy of the City to provide quality services at the most reasonable cost and to implement cost savings where possible; and

WHEREAS, when an agenda does not require the presence of the City Attorney, the required consent of Council is often impossible to ascertain in advance of the meeting;

WHEREAS, the City Manager is aware of Council agendas in advance and is able to determine whether any agenda item requires the presence of the City Attorney.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE THAT:

SECTION 1. The City Council of the City of Milwaukie does hereby find and declare that there are meetings at which it is appropriate to excuse the City Attorney from attendance pursuant to Milwaukie Municipal Code Section 2.04.120; and

SECTION 2. The City Council of the City of Milwaukie further finds that the consent required of the Council to so excuse the City Attorney from attendance pursuant to Milwaukie Municipal Code Section 2.04.120 is often difficult to obtain in a timely manner; and

SECTION 3. The City Manager is delegated the authority to excuse the City Attorney from attendance at regular and special meetings of City Council after consultation with the City Attorney and in consideration of the policies relating to use of legal advice and cost savings stated above; and

SECTION 4. The City Manager shall state that the City Attorney has been excused from a meeting pursuant to this Resolution and Milwaukie Municipal Code Section 2.04.120 at the commencement of the Council meeting upon recognition by the presiding officer; and

SECTION 5. This resolution shall take effect upon its adoption.

Introduced and adopted by the City Council on this _____ day of March 2003.

Larry Lancaster, Council President

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:

RAMIS, CREW, CORRIGAN, & BACRACH, LLP